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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/988,331	12/11/1997	CHARLES A. FINN	1968-REISSUE	7373

7590

04/17/2003

NEIL D GERSHON
UNITED STATES SURGICAL CORPORATION
150 GLOVER AVENUE
NORWALK, CT 06856

EXAMINER

WOO, JULIAN W

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 04/17/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary

Application No.

08/988,331

Applicant(s)

FINN ET AL.

Examiner

Julian W. Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. The amendment of January 24, 2002 does not comply with the manner of making reissue amendments as set forth in 37 CFR 1.173 (b)(2). However, an action follows which treats the amendment on its merits. A supplemental amendment in compliance with 37 CFR 1.173(b) should be submitted. Amendments may only be made as follows:

- a. Original patent claims must not be renumbered. 37 CFR 1.173(e).
- b. Claims added to the patent must follow the number of the highest numbered patent claim (37 CFR 1.173 (e)) and must be underlined in their entirety (37 CFR 1.173(d)).
- c. A claim (original or new) may be deleted by a statement requesting the deletion of a specified claim without presentation of the text of such claim. 37 CFR 1.173(b)(2).
- d. Any change to the text of a claim (original or new) must be presented as entire numbered claim (whether proposed by the applicant or made by the examiner in an Examiner's Amendment). All subject matter being added to an original patent claim must be underlined. All subject matter being deleted from an original patent claim must be placed between the brackets. 37 CFR 1.173(b)(2) and (d). Subject matter being added to a new claim requires rewriting (and underlining) of the entire new claim.
- e. If a claims is amended during reissue prosecution, a parenthetical expression "(amended)," "(twice amended)," etc., should follow the original claim number. 37 CFR

1.173(b)(2). Alternatively, applicant may effectively re-write a claim by presenting it as a new (fully underlined) claim with a new claim number, and canceling the old claim.

Brackets and underlining are to be used to reflect only those changes in the text from the original patented text and not from any previous amendment in the reissue application. 37 CFR 1.173(g).

f. Each amendment submission must set forth the status of all patent claims and of all added claims (i.e., "pending" or "cancelled") as of the date of the amendment. 37 CFR 1.173(c).

g. Each amendatory change, when first submitted, must be accompanied by an explanation of the support in the disclosure of the patent for the change (along with any additional comments) on page(s) separate from the page(s) containing the amendment. 37 CFR 1.173(c).

Oath/Declaration

2. The supplemental reissue oath/declaration filed on January 24, 2002 is defective because it fails to contain a statement that all errors which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claim Rejections - 35 USC § 251

3. Claims 1-47 are rejected as being based upon a defective supplemental reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

The Examiner recommends the use of the attached form PTO/SB/51S.

Allowable Subject Matter

4. Claims 1-47 would be allowable if an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) under 35 U.S.C. 251 is received.

5. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses a coupler member with a longitudinal bore and two pairs of openings having axes perpendicular to the central axis of the longitudinal bore, perpendicular to each other, and offset from one another, the pairs of openings for receiving a longitudinal rod and an eyebolt member with a shank portion and an eye portion having an opening for receiving a bone fastener, and the coupler member having a means for tightening the assembly of the rod and eyebolt together in a selected position. The prior art of record also does not disclose a spinal rod coupler assembly having a coupler member with first, second, and third openings and a fastener receiving member, where the first opening is dimensioned

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to slidably receive a spinal rod and fully surround a portion thereof, the second opening is dimensioned to receive a locking fastener to retain the spinal rod within the coupler member, and the third opening is for mounting of the fastener receiving member, where the fastener receiving member has an opening to receive a bone fastener, and the fastener receiving member is rotatably and slidably mounted with respect to the coupler to adjust the position of the coupler.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, since they were cited in the patent of this reissue application. Henry et al. (WO94/23661) and Yuan et al. (5,437,669) teach spinal rod coupler assemblies.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached at (703) 308-2496.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703)308-0858. The FAX number is (703)872-9302.



Julian W. Woo
Patent Examiner

April 15, 2003

Please type a plus sign (+) inside this box → ☐

PTO/SB/51S (08-00)

Approved for use through 12/30/2000. OMB 0651-0033

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**SUPPLEMENTAL DECLARATION
FOR REISSUE
PATENT APPLICATION
TO CORRECT "ERRORS" STATEMENT
(37 CFR 1.175)**

Attorney Docket Number

First Named Inventor

COMPLETE

Application Number

Filing Date

Group Art Unit

Examiner Name

I/We hereby declare that:

Every error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration(s) submitted in this application, arose without any deceptive intention on the part of the applicant.

I/We hereby declare that all statements made herein of my/our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of Sole or First Inventor:

☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Family Name or Surname

Inventor's
Signature

Date

Name of Second Inventor:

☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Family Name or Surname

Inventor's
Signature

Date

Name of Third Inventor:

☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Family Name or Surname

Inventor's
Signature

Date

Name of Fourth Inventor:

☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Family Name or Surname

Inventor's
Signature

Date

☐ Additional inventors are being named on the _____ supplemental Additional Inventor(s) sheet(s) PTO/SB/02A attached hereto.

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Burden Hour Statement: This form is estimated to take 0.03 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.